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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,345	04/09/2004	Robert J. Antonellis	T0592.70000US00	1000

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600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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10/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,345

Applicant(s)

ANTONELLIS, ROBERT J.

Examiner

Mark Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-246 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 11-22, 24-29, 35-75, 77-121, 123-128, 130-141, 143-148, 154-182, 184-225 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 23, 30-34, 76, 122, 129, 142, 149-153, 183, 184 and 226-246 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date <u>9/19/2007</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/24/2007</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/24/2007 has been entered.

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 76, 183 and 184 are rejected under 35 U.S.C. 103(a) as being unpatentable over August in view of Borton (US PG pub 20020188492).

1,122,236. (Currently Amended) An order optimization method, comprising:
tracking availability of one or more resources used for order fulfillment (para 0038),
communicating an order from a communication device to an order processing
computer (FIG 1), receiving said order ((para 0036-0039),
August teaches monitoring customer orders (FIG 10), but does not specifically mention
determining an optimized utilization of resources for fulfillment of received orders and
assigning resources to said order in accordance with said optimized utilization,
Borton teaches determining an optimized utilization of resources for fulfillment of
received orders (Borton, para 0025), and assigning resources to said order in
accordance with said optimized utilization(Borton, para 0025). It would have been
obvious to a person having ordinary skill in the art at the time of the invention to include
in August determining an optimized utilization of resources for fulfillment of received
orders and assigning resources to said order in accordance with said optimized
utilization as is taught by Borton, because it permits food to be made, delivered, and
carried-out in a strategic order and with strategic time delays to ensure optimal
temperature and freshness of the food to be delivered or picked-up (Borton 0017).

commanding the initiating fulfillment of said order (para 0039).

10,129. (Currently Amended) The order optimization method according to claim 122,

wherein said communication device is a telephone (August FIG 2, item 11).

23. (Currently Amended) The order optimization method according to claim 122, receiving the communication is done audibly (August FIG 2, item 16).

30,149. (original) The order optimization method according to claim 122, wherein receiving said order comprises displaying a series of hierarchal menus on a visual display(August FIG 9).

31,150. (original) The order optimization method according to claim 122, wherein assigning resources to said order comprises determining the availability of at least one limiting resource necessary to fulfill said order (August FIG 6,item 141).

32,151. (original) The order optimization method according to claim 150, wherein determining the availability of at least one limiting resource necessary to fulfill said order comprises referring to a look-up table comprising information that associates different types of limiting resources with different types of orders (August FIG 6,item 141).

33,152. (original) The order optimization method according to claim 150, wherein assigning resources to said order comprises determining a set of components for said order, and determining the availability of at least one limiting resource necessary to fulfill

each of said order components (August FIG 6,item 141).

34,153. (original) The order optimization method according to claim 152, wherein determining the availability of at least one limiting resource necessary to fulfill said order components comprises referring to a look-up table comprising information that associates different types of limiting resources with different order components (August FIG 6,item 141).

226,231,237,238. (New) The order optimization method of claim 122 further comprising predicting future availability of resources (August, FIG 10, predicted fulfillment order)

227,232,240. (New) The order optimization method of claim 122 further comprising tracking a processing status of said order (August, Fig 10).

228,233,241. (New) The order optimization method of claim 122 further comprising determining a priority value of said order (August para 0034).

229,234,242. (New) The order optimization method of claim 233 further comprising adjusting the priority value of said order (August para 0034).

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230,235,243. (New) The order optimization method of claim 122, 233 or 234 further comprising halting fulfillment of said order (August, para 0038).

239. (New) The article of claim 236 wherein the optimizing further comprises optimizing allocation of resources to processing said at least one order (Borton, para 0025).

244. (New) The article of claim 236 wherein the computer readable medium further comprises instructions which, when executed, adjust resources allocated to said at least one order after processing of said at least one order has commenced (August, FIG 10, resources are removed when work is stoped and resources moved when the order is complete).

245. (New) The article of claim 236 wherein the computer readable medium further comprises instructions which, when executed, adjust resources allocated to an order different from said at least one order after processing of said at least one order has commenced (Borton para 0016, resources are optimized amongst a plurality of orders, thus meeting the element).

246. (New) A computer-assisted method for managing order processing, wherein at least one portion of the method is performed with the assistance of a computer, the method comprising: receiving orders (see response to claim 1); determining availability

of resources for completion of orders (August, FIG 10); estimating future availability of resources for completion of orders August Fig 10, time to travel) optimizing matching of a subset of the received orders with resources that are either available, or estimated to be available in the future; and initiating processing of orders based on the optimizing (Borton para 0016).

Claim 76, 183 and 184 are rejected under 35 U.S.C. 103(a) as being unpatentable over August in view of McDonald, Jr. et al (US PGPub 20020077750) and further in view of Borton (US PG pub 20020188492).

In regards to claim 76,183 and 184 August teaches providing information about the completion and availability of orders (FIG 10), but does not specifically mention that this information along with assigned, unassigned and reassigned information is provided to a delivery driver. McDonald, Jr. teaches providing status information to delivery drivers (FIG 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in August providing scheduling information to the drivers because displaying this information to assigned drivers would prevent the driver leaving the store without all the required deliveries (Borton, page 1, para 0012).

Response to Arguments

Applicant's arguments filed 7/24/2007 have been fully considered but they are not persuasive..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'M L 2', followed by a long horizontal flourish.

Mark Fadok

Primary Examiner